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MUNICIPAL REGULATION OF SIGNS

What methods are available for the regulation of signs? What types of signs are usually regulated? What enforcement measures are necessary? Can nonconforming signs be eliminated?

Municipalities, generally speaking, have clear-cut authority to control signs by use of zoning restrictions under the municipal police power. As in many aspects of municipal regulation related to planning and zoning, there has been over the years increasing court recognition of aesthetic standards as a consideration — if not a determinant — in ruling on measures prohibiting or restricting signs. Further, the practice of requiring elimination of nonconforming land uses within a specified time period has been upheld in its application to signs in some court cases.

One phase of sign regulation — billboards along public highways — has long been a lively issue, with the outdoor advertising industry on one side and a combination of garden clubs, automobile clubs, and roadside councils on the other. This battle, almost as old as the automobile, found new ground recently in the federal interstate highway program. But skirmishes in state capitols and city council chambers are not unknown.

Because it has been fought mainly at the federal and state level, the billboard battle is not the concern of this report. It has served to point up clearly and repeatedly, however, one basic difficulty in any sign regulation — the conflict between public interest and the right to make use of private property. Both the general municipal police power and the fundamental property right are well established in law. But where the two come in contact, it often is difficult to determine the line of demarcation.

And while there has been considerable litigation about sign regulation, not all questions are fully resolved. This report has been prepared to present the basic considerations a municipality should weigh when preparing or revising sign regulations; to discuss some of the trends in legislative measures, enforcement procedures, and court interpretation; and to suggest some features which might be included in local regulations.

Private Regulation

Three types of private actions have been taken to restrict signs.

Deed Restrictions. Restrive covenants prohibiting signs have been used in privately developed real estate subdivisions. Their effectiveness depends on the sometimes uncertain willingness of neighboring property owners to take legal steps against one who breaks the covenant. Such controls have the further weakness of not covering the fringe area, outside the subdivision, where signs may have an adverse effect on property values within the subdivision.

Gentlemen's Agreements. Merchants and property owners in some commercial districts have voluntarily restricted the type, size, and location of their signs. Merchants along New York's Fifth Avenue have had singular success in this regard, and their street has a distinctive appearance not found elsewhere in the city. Such cooperation is successful only where there is unanimity among the parties involved; one defector can start a chain reaction.

Management Controls. New suburban shopping centers are frequently characterized by sign regulations limiting size, location, and content. This is in contrast with the competition for bigger

and brighter signs which has scarred some downtown business districts. Shopping centers in many cases allow only identification signs (as opposed to advertising signs) and specify terms in the leases which prevent a single sign from detracting from the architectural unity of the center. Again the problem of fringe areas is not touched.

Basic Types of Controls

Municipal sign regulations are intended to deal with two basic problems: structure and location. This dual character of regulation often has resulted in a division of rules relating to signs between the building code (or a special building-type sign code) and the zoning ordinance.

1. Structural Controls. Such controls normally deal with the erection and maintenance of signs. The building code or special sign code may specify restricted location on a lot or relation to a public right-of-way, but these regulations usually do not state in what districts particular types of signs are permitted.

2. Location Controls. Zoning ordinances are the usual vehicles for enactment of location controls related to land use. Thus billboards may be excluded from residential districts but permitted in industrial districts. It is a rare ordinance which attempts to ban all types of signs from any district, or any type of sign from all districts. For example, real estate and church signs are normally permitted in any district, and most cities (there are exceptions) try to find places for all sign types.

Legislative Basis for Sign Regulation

Sign regulation, like all other types of municipal regulation, must have a legislative basis. In regard to structural features, the municipality's police power to protect the health, safety, and morals of the community is sufficient on its face. But the basis of planning laws is perhaps less clear to the general public. The 1959 edition of *Local Planning Administration*, published by the International City Managers' Association, discusses this problem at some length.

> It is the landowner's privileges to use his land that are most often affected or limited by city planning measures. Two major controls have evolved to set the outside bounds beyond which American communities may not go in diminishing the landowner's use privileges or other aspects of his property interest.
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> 1. Planning measures must satisfy federal and state constitutional requirements of "due process" in that the regulation must be in the public interest. That is, they must be directly related to public health, safety, morals, or welfare. It is said by the courts that the measures must not "unreasonably" impair the owner's property interest and must be "reasonably" related to the planning goals sought. This general language allows a wide latitude for planning action. Great public need, if found by the courts, justifies much more restriction than slight need does. But always, in spite of great need, there is an ultimate limit beyond which the local unit cannot go unless fair compensation is paid for the property interest taken.
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> 2. Planning measures must be in accord with the enabling act or charter that is the source from which the local governmental unit draws its planning powers. This control has two aspects — one substantive and the other procedural. A measure must not exceed the substantive planning powers delegated to the local unit, and it must have been adopted in accordance with specific procedures (for example: notice, study, and hearings). Here is a block over which many a planning measure has tumbled into invalidity. A measure that attempts retroactive zoning in the face of an enabling act which expressly forbids it, or a zoning ordinance that was enacted without the notice or hearing required by the enabling act, is just as dead when declared "invalid" by a court as if declared "unconstitutional."

Exercising Municipal Powers

Considerations which have led to municipal regulation of signs have included safety, maintenance of property values, community appearance, and abatement of nuisances.

Safety. Sign regulation based on safety has two elements: structural safety and traffic safety. Regulations dealing with these points are commonly found in the building code or special sign (non-zoning) ordinance.

It is clearly the municipality's responsibility to be sure that a sign is soundly constructed and will be reasonably invulnerable to conditions such as wind and weather which could turn it into a hazard. Large signs such as marquees and billboards atop roofs must be built soundly and safely.

Structural safety considerations have resulted in the banning of certain types of signs held to be *de facto* hazards. The best example is overhanging signs prohibited by many cities on the grounds that they are a potential hazard to pedestrians and dangerous to firemen who might be called upon to fight a fire in a building supporting the sign. (The fact that some cities continue to permit such signs indicates that this belief is not universal.)

Traffic safety considerations have led to the prohibition of signs entirely under certain circumstances. Like many other aspects of sign regulation, safety controls have caused considerable controversy. Attempts to correlate frequency of accidents with proximity to billboards, for example, have proved inconclusive. But the argument goes on. Opponents contend that billboards distract motorists; others say that more billboards along our new superhighways would contribute to safety by reducing the possibility of "turnpike hypnosis." It has been argued also that neon signs in business districts and flashing lights (some newer ones closely resemble flashing lights atop police patrol cars and fire engines) distract drivers' attention from traffic signals and their main job of driving.

Despite the inability to reach definite conclusions to satisfy all concerned, many cities have regulated signs for safety purposes. Commercial signs have been prohibited from streets adjacent to parks, recreation areas, schools, and other public buildings where there is likely to be heavy pedestrian and vehicular traffic.

One authority has noted, "Ordinances prohibiting signs or billboards or other advertising structures within a certain distance of a street, a driveway or filling station entrance or exit, parks and boulevards, an intersection, or other structures, have been sustained."[1]

Property Values. One of the reasons for zoning is to prevent erosion of property values by incompatible land uses. It has been held to be within the police power to prohibit outdoor advertising and billboards in residential zones. Where zoning is in effect, it is the almost universal practice to include such a ban. Other types of signs, limited in size and erected under prescribed circumstances, may be permitted in residential districts. For example, cities often permit a subdivision developer to put up an identification sign not normally permitted in residential areas, but the permission is granted for a specified time after which the sign must be removed.

Banning certain types of signs altogether is risky from both a legislative and legal viewpoint. But the relating of sign types to land use has been accepted by the courts. Thus signs of a given type may be banned entirely in residential areas, be limited in size and other characteristics in commercial zones, and be relatively unrestricted in industrial zones.

Community Appearance. Signs which have an unsightly appearance in relation to their surroundings are subject to regulation through zoning, held by the courts to be a proper exercise of municipal police powers. While it would not be quite correct to say that aesthetics is the prime consideration, the courts have tended to be more sympathetic to legislation based in part on these grounds than they were when planning was struggling for public acceptance a half-century ago. The present situation has been described as follows:

> The regulation of signs by municipal ordinance is today a common practice in this country. Practically all building codes set forth sign requirements, mainly of a structural character, with the primary objective of securing public safety. Zoning ordinances have increasingly introduced other regulations, differing in the different zoning districts, on the principle that outdoor advertising is a type of land use, the character of which may effect the public welfare where it appears in an exaggerated form or in locations that are not appropriate. This tendency to formalize and to make more specific and more restrictive such regulations is most noticeable in places where there is a strong sense of local pride in the over-all appearance and attractiveness of the community.
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> But even in our largest cities, the need for some controls has been brought forcibly to the attention of the governing bodies by the run-away of design and in the self-defeating multiplicity of displays, the end result of which is to destroy the effectiveness of all moderate signs and at the same time to give the whole city a cheap and tawdry appearance.[2]

[1] Charles S. Rhyne. *Municipal Law* (Washington, D. C.: National Institute of Municipal Law Officers, 1957), p. 581.
[2] *Report on Sign Regulation* (prepared by Nestor Barrett, planning consultant, for Campbell, California, Planning Commission), 1958, p. 1.

Five groups of central business district businessmen and property owners in Chicago have gone somewhat further. They have urged that the city's 1957 comprehensive zoning code be amended to provide for amortization of the nonconforming signs in their district by January 1, 1966. Overhanging signs, billboards, and certain types of rooftop signs cannot be put up in the area under the 1957 code. But the 1957 code did not deal with such signs in existence at the time of its adoption.

The downtown interests supported a proposed amortization amendment which would eventually eliminate existing signs. Their spokesman, Nelson W. Forrest, executive director of the Greater North Michigan Avenue Association, said: "Without these signboards and rooftop signs, it would not be profitable for some property owners to leave land vacant or fail to replace outmoded structures. The amendment would be a further step in beautifying the city."[3]

Nuisance Abatement and Prevention. Small signs such as those advertising a special event or political candidate, frequently are tacked to poles and fences. In some states, such as Pennsylvania, the placement of such signs on utility poles is a matter of state regulation on the grounds that the nails are a hazard to utility company linemen. Some municipalities have banned such signs because they constitute a nuisance since wind and rain can turn the signs to street litter within a few days or weeks.

Building inspectors often are given authority to review construction plans for the erection of more permanent signs to determine whether they will become collecting places for windborne trash and papers; inspectors have the power also to require changes in existing signs to eliminate such a nuisance.

Classification of Signs

Signs usually are classified for regulatory purposes by physical characteristics, location, role of sign, and purpose of sign.

Physical Characteristics. The American Society of Planning Officials has placed advertising signs in these categories: overhanging, ground, roof, wall, pole, directly illuminated, indirectly illuminated, flashing, and "snipe" (a small sign attached to a pole or tree).[4]

The National Institute of Municipal Law Officers (NIMLO) model ordinance lists: ground, wall, roof, projecting (overhanging), temporary, awnings and canopies, and street clocks.

Such classifications are frequently used to determine what type of structure will be permitted under a given set of circumstances. For example, pole signs at a gasoline service station may be placed differently on a lot than an awning; temporary signs might be permitted to project in the street farther than permanent projecting signs.

Location. Certain types of signs may be permitted where others are prohibited (apart from zoning). For example, signs which are entirely over public property are generally subject to greater restriction than those entirely on private property.

Role of Sign. Ordinances sometimes distinguish between accessory and nonaccessory use. Accessory signs relate to the business on the same premises as the sign. Nonaccessory signs advertise a business some distance away, or a product not sold at the same place as the sign. The typical billboard falls into this category. This is usually of importance in setting up zoning classifications for business districts, where accessory signs may be permitted and nonaccessory signs excluded.

Purpose of Signs. Another frequently-used classification is the distrinction between identifying signs and advertising signs. Identifying signs usually list the name of the store and perhaps a descriptive word or two such as "supermarket," "jeweler," or "department store." Advertising signs describe products or services on sale either on the premises or elsewhere. Accessory signs may be either identifying or advertising; nonaccessory signs usually are advertising signs.

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[3] *Chicago Sun-Times*, September 18, 1959, p. 43.

[4] Planning Advisory Service, *Outdoor Advertising* (Chicago: American Society of Planning Officials, 1957), p. 4.

Writing the Regulations

Recognizing the different purposes of structural and land use (zoning) regulations, few cities attempt to group all provisions relating to signs into one ordinance. However, coordination is necessary in preparation of the regulations. The Evanston, Illinois, sign ordinance, for example, contains this statement:

"The provisions of this ordinance regulating the location, placement, gross surface area, projection and height limitations, and the number of signs or other advertising structures, shall be subject to and further restricted by any applicable provision of the present or hereafter adopted zoning ordinance of the City of Evanston."

Separation of the structural provisions from the zoning provisions appears wise. An attempt to combine the two might result in insufficient attention to structural regulations. And a case might be made for establishing a separate sign ordinance, apart from the building code. Some signs, such as billboards and poster, are not necessarily affixed to buildings for support, and there are relatively few occasions when sign construction involves the same problems as building construction. (Marquees are an exception.) Administratively, a separate ordinance has the advantage of consolidating regulations relating to size, shape, support, location on a lot, and other characteristics of signs for easy reference by the public.

Community Practice. As indicated earlier, imposition of sign regulations affects the rights of property owners. Advertising is a legitimate business practice. While Fifth Avenue gains distinction from the absence of bright signs, so does Times Square through the overwhelming display of flashing, multicolored signs.

The effects of sign regulation may or may not be extensive; this is a matter to be determined by each city. Property owners may find they are restricted in their right to lease land for billboards; businesses may find their right to advertise curtailed.

In regard to this, Barrett said:

> The greatest technical difficulty arises, however, not in defining the categories and setting up general rules to prevent construction of the worst type of sign, but in finding equitable and justifiable rules of proportion to fit the wide variety of cases which arise. One solution for this is, of course, to put into the ordinance only general maximum limits of dimension and to give to a board of review the power of issuing or refusing sign permits in accordance with general principles laid down as to the effect of the particular sign upon the environment.
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> This method really only begs the question, since the board must either base decisions on precedent or act at random, and the applicant in either case has no real assurance as to what successive boards will do over a period of time. It appears better, therefore, to study the prevalent uses in the community, to find out the dimensional characteristics of signs which seem generally acceptable as guides to future development, and upon these observations to draft some "rules of thumb" which would if in force have permitted these, but would have prevented construction of those observed which were definitely not desirable.[5]

Examples of Sign Regulations

A Standard Code. The National Institute of Municipal Law Officers has prepared a model sign code which has been widely used as the starting point in the preparation of many municipal codes. It contains these general provisions:

1. A permit must be sought from the building inspector; in the case of illuminated signs, inspection by the electrical inspector also is required.

2. Annual maintenance inspections shall be required, and the holder of the permit shall be required to pay an inspection fee.

3. Unsafe and unlawful signs may be ordered removed by the building inspector.

4. The permit number, date of erection, and voltage of any electrical apparatus must appear on the sign.

[5] Barrett, *op. cit.*, p. 5.

5. Painting is required every two years, except where the sign is galvanized or otherwise treated to prevent rust.

6. Signs and supporting structures must be designed to withstand a wind pressure of not less than 40 pounds per square foot of area.

7. Applicants for a permit must furnish a bond to indemnify the city from all damages which might result from the issuance of the permit.

8. Doors, windows, and fire escapes must not be blocked by signs.

9. Signs must not constitute traffic hazards. In addition to being located away from driveways and intersections, they must not make use of the words "Stop," "Look," "Drive-In," "Danger," or any other word or symbol which might mislead or confuse traffic.

10. Lights which shine on public property are prohibited.

11. Obscene matter is prohibited.

Other NIMLO suggestions deal with the materials, location, height, and similar limitations, erection, and dead load requirements for the various types of signs. Among the special points covered are requirements that movable parts must be securely fastened; where glass is used it must be wired or safety glass; ground signs must be kept free of weeds and litter; and street clocks must show accurate time or be removed.[6]

(Some cities ban self-illuminated signs; others require that illuminated signs be kept turned on from dusk to 11:00 p.m., except on Sunday.)

Mount Lebanon Township, Pennsylvania. The typical contrast between signs permitted in residential districts and those permitted in commercial districts is a feature of the Mount Lebanon Township, Pennsylvania, zoning ordinance enacted in 1955.

A. Residence Districts. In residence districts, only the following nameplates and signs shall be permitted:

1. A nameplate, not exceeding two square feet in area, containing only the name of the resident, title of person practicing a profession, name of building, and name of agent.

2. A bulletin sign, not exceeding 15 square feet in area, erected upon the premises of a church or other institution for the purpose of displaying the name of the institution and its activities or services.

3. A land sales sign, nonilluminated, advertising the sale or development of lot subdivisions containing an area of not less than seven lots erected upon the property so developed and advertised for sale, provided the size of such sign is not in excess of 25 square feet, and not more than two such signs are placed upon any property in single and separate ownership.

4. A real estate sign, nonilluminated, not exceeding six square feet in area, appertaining to the sale or lease of the premises.

5. A contractor's sign, nonilluminated, advertising the development or improvement of a property by a builder, contractor, or other person furnishing service, materials, or labor to said premises, provided the size of any such sign is not in excess of 12 square feet.

6. No sign shall be erected upon, or applied to, any roof. The term "sign" here shall not apply to a religious symbol, unaccompanied by lettering, when applied to the cornice, tower, or spire of a place of worship.

7. Permitted illumination of sign, nameplate, or bulletin board shall be of a nonflashing type.

8. Signs shall be located at least 15 feet back from the street property line of the premises on which same are erected or maintained, unless attached on the building.

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[6] National Institute of Municipal Law Officers, *Municipal Regulation of Signs, Billboards, Marquees, Canopies, Awnings, and Street Clocks.* (Washington, D. C.: The Institute, 1952).

9. Signs as referred to in this section and elsewhere in this ordinance shall be constructed of durable materials and shall be kept in good condition and repair.

10. No permit for the erection, construction, or maintenance of signs permitted under 3, 4, and 5 above shall be issued for a period of more than one year.

11. No permit for a billboard, an exterior portable sign, or an exterior wind-operated display shall be issued in any district.

B. Business Districts. In a neighborhood Shopping District and Commercial District only the following nameplates and signs shall be permitted:

1. A nameplate or sign permitted in Residence District.

2. A sign displayed on the inside of a building.

3. An identification sign attached to or on a front or a side wall of a building and with face not more than 10 inches therefrom, so erected so that no portion of the sign is less than seven feet above the basic grade. If the signs do not project from the wall of building, it shall not be required to conform to the said seven feet height above grade. The sign shall identify the owner of, or enterprise conducting the business; the business engaged in upon the premises, or products or services sold; or any combination thereof. It may be an illuminated sign, provided it is nonflashing, and, if said illuminated sign faces a residence district, it shall be in excess of 100 feet therefrom.

4. An identification sign on a gasoline pump not more than 12 inches in diameter.

5. When a building occupied by a business is set back from its front property line by a distance greater than 10 feet, one permanent additional identification sign not exceeding 40 square feet in area may be installed by such business behind its property line for each 100 feet, or fraction thereof, of frontage, provided that such additional identification sign shall not interfere with any line of sight required for traffic.

6. When property is occupied by a business without a building, one permanent identification sign not exceeding 40 square feet in area may be installed by such business behind its property line for each 100 feet, or fraction thereof, of frontage, provided that such additional identification sign shall not interfere with any line of sight required for traffic.

Notice the absolute ban on billboards. (The township, a suburb of Pittsburgh, has no industrial districts.) With this exception, however, the ordinance sets differing standards for residential and commercial-neighborhood shopping zones. The residential provisions make necessary concessions to building development and professional requirements, but basically the aim is to retain the residential character of the districts. Signs in the business districts are limited to identification signs restricted in size and, in the case of projecting signs, in the extent of projection.

Regulations of California Cities. Barrett, who surveyed sign regulations practices in various California cities says that a common "rule of thumb" in sign regulation is to "relate the total display area of all signs on a lot to the lot front footage, but with a fixed maximum. An example of this is the rule of Menlo Park which allows display area to increase uniformly from 30 square feet to 100 square feet as the frontage increases from 10 to 72 feet, remaining at 100 for wider lots. Separate calculations are made for side or rear in the case of corner or through lots. This is clearly an arbitrary formula, but it has been in use for some years with good results."[7]

Barrett came to several conclusions about regulatory practices in California cities:

> Practically all sign ordinances prohibit advertising signs in residential areas. Certain types of signs such as nameplates and sale or lease signs are usually permitted with maximum sizes specified and other minor limitations. Some ordinances also prohibit advertising signs within a certain distance of residential buildings, even though they may be in a commercial district. Subdivision signs are usually excepted from restrictions on advertising in residential areas, but only when actually in the course of development.

[7]Barrett, *op. cit.*, p. 6.

Barrett also finds that accessory signs are necessary in business and industrial districts. However, he notes that if accessory signs are not regulated in any way except as for structural safety, then it will be difficult to find a reasonable basis for prohibiting advertising signs. To be effective and to be fair to those who come under sign regulations after enactment, Barrett says, some provisions must be made for their removal or alteration so as to bring about conformance of all nonconforming signs.

Here are some regulations of California cities included in Barrett's survey:

1. Menlo Park. Sale or lease signs up to six square feet, one square foot nameplates, and subdivisions signs up to 100 square feet are permitted in all districts. Directional or informational signs in any district may be erected upon approval by an architectural board of review, provided that the sign may not exceed 40 square feet or eight feet in any single dimension. Temporary signs are limited to a maximum of 18 square feet or six feet in length.

Signs permitted in commercial and manufacturing districts may present a total display area of not more than 100 square feet, depending on a formula when front footage is less than 100 feet. The signs may not extend more than one foot above the face of the structure or extend over the sidewalk or property line more than one foot. If attached to a building, the sign must be parallel to the wall. Nonconforming signs were to be abated within five years of the ordinance date (1953).

2. Palo Alto, California. All signs are forbidden except signs pertaining to business on premises or sale of premises (with written consent of owner, occupant, or lessee). In residential districts, churches may have wood signs of not nore than 20 square feet, and identifying signs are permitted in certain residential districts up to a maximum ratio of one square foot of sign for each 40 square feet of building frontage. The sign must be flat against the building and not be self-illuminated.

For-sale signs up to six square feet are permitted as are two subdivision signs not over 40 square feet and located at least 100 feet from any existing dwelling. A $50 deposit is required to guarantee removal after a six-month limit, with a 90-day extension permitted.

Free standing signs or billboards are limited to 40 square feet and a maximum height of 12 feet above the ground. Free standing signs may project one foot from the property line, if 10 feet above the ground. They may be double faced. Billboards announcing construction projects are limited to 10 square feet in residential areas, but may be bigger in other districts. All must be removed before release of construction by building inspector.

Board or free-standing signs are limited to one for each "place of business or street exposure." Flat signs on a building must meet size limitations and be at least seven feet above the ground. Projecting signs must be incombustible, projection may not be more than one foot from the property line, and there must be 10 feet of clearance above sidewalk. Only one sign is permitted per business place and its letters may not be over 8 feet in height and area must be limited to 100 square feet.

3. Burlingame. Real estate signs may not exceed three square feet in residential areas. Nameplates are limited to two square feet; identification signs on apartments, three square feet; signs on construction work, 32 square feet; and signs on building walls, 20 per cent of total wall area (only the name, products, and occupation of occupant may be listed).

Signs prohibited include: real estate directional signs and arrows; placards; posters, etc., attached to fences, poles, trees, or other objects in public street or place; "A" boards and the like attached to the ground except newspaper vending machines; and signs (nonaccessory) carrying advertising relating to other premises.

4. Santa Barbara. Signs prohibited include horizontal wing-type signs; wind signs; horizontal "V" type signs (except upon approval by city council after recommendation by Architectural Board of Review); moving signs; and outline tubing. Also prohibited, within 120 feet of any residential zone, are signs with flashers, animators, or mechanical movement of any kind (except clocks); signs with flood lights not attached to the sign structure; roof signs; and signs displaying the price of a product or service.

Signs allowed include pole signs not to exceed 80 square feet or 30 feet in height. Accessory

signs, not exceeding three square feet, may be attached or suspended from a pole sign, within limitations. Wall signs, not exceeding 15 per cent of the total wall surface area, also are permitted. Projecting signs may not be less than 10 feet above grade level nor project more than 24 inches from the property line or from the face of the building.

5. Los Altos. Projecting signs not to extend more than one foot from property line and provide at least 10-foot clearance. Nonconforming signs must be altered to conform.

6. Monterey. Only signs permitted are single-faced horizontal signs placed parallel to face of building to which attached, not having a vertical height of more than 30 inches nor exceeding 75 per cent of the width of the frontage. Marquees are excepted. Nonconforming signs must be eliminated.

Exceptions

As has been indicated, real estate and certain other types of signs are usually excepted from regulation or are permitted with limitations.

The NIMLO model ordinance recommends the exception of:

1. Real estate signs not exceeding eight square feet.

2. Professional nameplates not exceeding one square foot.

3. Signs painted on the exterior surface of buildings, provided that they will become subject to ordinance if letters are raised or if the sign is illuminated. (This provision would be eliminated if the zoning ordinance prohibits such painted wall signs in certain districts.)

4. Bulletin boards of eight square feet or less on premises of public, charitable, or religious institutions.

5. Signs not exceeding 16 square feet or less relating to construction projects.

6. Occupational signs denoting name and profession of occupant of building, the sign not to exceed two square feet.

7. Memorial signs or tablets; names of buildings and date of erection when cut into masonry, bronze, or other incombustible material.

8. Traffic or other municipal signs, legal notices, railroad crossing signs, danger signs, and temporary and nonadvertising signs as may be approved by the city council.

Church signs are frequently exempt from regulation. NIMLO in the *Municipal Law Journal* reported recently:

> The Supreme Court of Colorado decided that although "advertising signs" were not permitted in residential zones, this restriction does not apply to a church, which by the terms of an ordinance was not excluded from residential areas although there was no specific provision for church signs. The court noted that a church sign was an "identifying sign" and was not an "advertising sign" which would be considered prohibited by the ordinance in question.[8]

A recent San Francisco, California, ordinance, exempts name signs, identifying signs, sale and lease signs (with limitations), official public notices, bulletin boards announcing meetings on premises, nonstructural posters used in political or civic campaigns, temporary religious or patriotic displays, and house numbers.

Enforcement

Administrative Organization. Because of the dual nature of sign regulation, enforcement is usually a joint responsibility of the building inspector and the zoning officer. There should be a high

[8] *Municipal Law Journal*, May, 1959, p. 41.

degree of coordination between the two. In larger cities it may be necessary to assign a member of the building inspection staff to the job of sign inspection on a full-time basis, particularly where annual inspections are required. For illuminated signs, further coordination is needed with the electrical inspector.

The chief administrator should be particularly concerned about the problem of coordination where the zoning and building inspection officials are not in the same department, or where the size of the department to which they belong is so large that it presents an impediment to smooth processing of a permit application.

Review by an architectural board may be required in some cities. And frequently signs may be permitted upon granting of a special exception by the zoning board of appeals or adjustment. While this practice brings a wider viewpoint to the question of whether a sign is suitable for a given district, there should be clear-cut guides for these boards in determining the applicability of the zoning ordinance's provisions. Without standards to guide their discretion, the decisions could easily become capricious or arbitrary.

Permits. Permit requirements, including inspections, provide control of the location, erection, and maintenance of signs. Courts have held that the permit may be revoked where the sign no longer meets the conditions under which it was issued, and thus the permit is not only an initial but also a continuing control.

Fees. Fees should cover the cost of administering the ordinance or ordinances governing signs. The NIMLO model ordinance suggests that this fee be an amount per square foot in the case of permanent signs, and that flat fees be charged for canopies, street clocks, and temporary signs. It suggests a square-foot charge for each sign reinspected.

Evanston, Illinois, charges a flat amount per sign, plus 10 cents per square foot of the sign area. Annual inspection fees are one-half the base rate of each sign type, plus the 10 cents per square-foot charge.

Nonconforming Uses

The question is certain to come up as to signs that are nonconforming when the ordinance is adopted or substantially amended. This is a common problem in zoning and is resolved by amortization in those few cities that attempt to eliminate nonconforming land uses. The property owner is allowed to continue his nonconforming use until his original investment is amortized.

Courts in some states have upheld the validity of requiring elimination of nonconforming signs within a stated period of amortization time. Because the investment in signs is relatively small, courts have ruled that the property owner is not being unduly deprived of his rights, and the time periods specified generally have been short (a few months to a few years), as compared with amortization preriods of up to 40 years on nonconforming buildings. Three and five-year periods are most common for signs.

The New Rochelle, New York, requirements severely limiting projecting signs, is one of the test cases in this field. Since its amortization provision was upheld in 1945 many cities have invoked similar rules.

A typical ordinance is that of Highland Park, Michigan, which banned signs which projected more than 12 inches over the public sidewalk. It required removal within a five-year period. Awnings and marquees were exempted. Contested on the grounds that this constituted un-uniform application, the ordinance was upheld by the state supreme court which said there were clear and obvious distinctions between a projecting sign and an awning or marquee.[9]

A Maryland case ended in a similar ruling regarding billboards. A Baltimore city ordinance required removal of billboards from residential areas after five years. The court's opinion, upholding the ordinance, said:

[9] *Ver Hoven Woodward Chevrolet V. Dunkirk*, Supreme Court of Michigan, 88 N.W. 2d 408, 1958.

"The earnest aim and purpose of zoning is to reduce nonconformance to conformance as speedily as possible with due regard to the legitimate interests of all concerned, and the ordinances forbid or limit expansion of nonconforming uses and forfeit the right to them upon abandonment of the use or the destruction of the improvements housing the use."

The court said that while it is generally held unreasonable and unconstitutional for a zoning law to require immediate elimination of nonconforming uses, "every zoning ordinance impairs some vested rights, because it affects property owned at its effective date."

> The distinction between an ordinance restricting future uses, and one requiring existing uses to stop after a reasonably time, is not a difference in kind but one of degree and, in each case, constitutionality depends on overall reasonableness, and on the importance of the public gain in relation to the private loss.... There is no difference in kind, either, between limitations that prevent the adding to, or extension of, a nonconforming use, or provisions that the right to the use is lost if abandoned, or if the structure devoted to the use is destroyed, or the denial of a right to substitute a new use for the old, all of which are common if not universal in zoning laws, and all of which are established as constitutional and valid, on the one hand, and the requirement, on the other, that an existing nonconformance must cease after a reasonable time....[10]

A commentary on the decision summarized the court as follows:

> In setting a five-year amortization period, after which billboards must be removed from residential areas, the Baltimore city council did not act arbitrarily, nor could it be said that the council is wrong in its conclusion that the effects for good on the community by the elimination of billboards within five years would far more than balance individual losses....
>
> As to whether the applicable ordinances took substantial property from the billboard company, without compensation, the court pointed to the income tax return made under oath and penalty of perjury; to the fact that the company could terminate the leases, which it entered into with the knowledge of the amortization ordinances, if the law forbade maintenance of the billboards; and to the fact, the signs in residential districts, which constituted the five per cent of the company signs in the Baltimore area, could be removed to commercial and industrial zones if they had any further useful life after five years.[11]

Evanston's ordinance (effective September 1, 1958) sets up three different schedules for the elimination of nonconforming signs:

1. Unsafe and unlawful signs and those which advertise a business no longer being conducted on the premises were to be removed immediately.

2. Signs constituting traffic hazards, those violating illumination regulations, retractable canopies and awnings, and obscene signs were to be either eliminated or made to conform by January 31, 1959, five months after adoption.

3. All other signs in violation of or nonconformity with the statute must be either made to conform immediately or no later than January 31, 1969. The latter date is effective if the alteration or repair required in order to bring the structure into conformity will cost more than 25 per cent of the physical value of the structure on the effective date of the ordinance. Evidence of such cost and the physical value of the structure shall be submitted to the director of building no later than January 31, 1959, and, if acceptable, shall be placed on file in his office.

(Several other ordinances relate the value of the structure to the time period for conformance by use of the assessed value of the sign.)

Conclusions

It is a widespread practice among cities to regulate advertising and other signs, both in structural characteristics and location. Subjects of regulation may be the size, number, position, and character of business and other signs. Regulation is by type of sign, by zoning district, by accessory or nonaccessory use, and by purpose.

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[10] *Grant et al. V. Mayor and City Council of Baltimore et al.*, Maryland Supreme Court, No. 102, October Term, 1956.

[11] *Advance Reports of Maryland Reports*, Vol. 212, No. 6 (Charlottesville, Virginia: The Michie Company, 1957), pp. 302-303.

Regulations are frequently included in both zoning ordinances and building codes. However, there is an increasing tendency to separate sign regulations from the body of the building codes and from zoning codes (except in relation to land use.)

Land use in the zoning district is the controlling factor in determining the type of sign to be permitted. While the regulations may tend to be relaxed as one moves from highly restricted residential zones to industrial zones, there is a tendency to place maximum limitations on size and other features in all districts.

Sign control in business districts presents a special problem. The tendency is to require moderation of competing signs which are unsightly and reduce the effectiveness of all signs in their primary purpose of attracting people's attention to business places. Unsightliness is a motivating factor in the elimination of projecting signs, although safety considerations also are involved.

Sign regulation involves determining a sound basis for regulation, both in terms of community practice and community desires. This is another reason for regulating the various types of signs rather than signs generally. It is thus easier to validly set up classifications which will meet court tests of uniform application.

Because of the dual nature of sign regulations, close administrative cooperation between the zoning and building inspection functions is required. Clear-cut standards should be established to guide the inspecting officials and review or adjustment boards in determining the applicability of the ordinances in given situations.

In any case, regulations must be promulgated within the framework of enabling legislation and tests of constitutionality. However, it should be recognized that in matters of sign regulations, as in many other aspects related to planning and zoning, the courts have shown a willingness to consider aesthetic standards in the application of such laws.

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Advertising Signs on the Federal Interstate System. The United States Bureau of Public Roads, after this report went to the printer, clarified for ICMA the 1958 and 1959 amendments to the Federal-Aid Highway Act with respect to billboards on the Interstate System. The 1958 amendment provided that it shall be "national policy" to prohibit the erection of most types of advertising signs within 660 feet of the edge of the right-of-way. The Secretary of Commerce was authorized to enter into agreements with individual states to promote this policy. To date no state has made such an agreement with the Secretary of Commerce.

The 1959 amendment provides that if such an agreement is made it will not apply "to those segments of the Interstate System which traverse commercial or industrial zones within the. . . boundaries of incorporated municipalities wherein the use of real property adjacent to the Interstate System is subject to municipal regulation or control. . . ." This means that regulation of outdoor advertising along municipal portions of the interstate system must be done by municipal governments if it is to be done at all.